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WILEY, REIN & FIELDING

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WASHINGTON, D. C. 20006  
(202) 429-7000

WRITER'S DIRECT DIAL NUMBER

November 25, 1996

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NOV 25 1996

Federal Communications Commission  
Office of Secretary

William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

**Re: In re Applications of Liberty Cable Co., Inc. (WT Docket No. 96-41),  
Bartholdi Cable Company, Inc.**

Dear Mr. Caton:

On behalf of Bartholdi Cable Co., Inc., formerly known as Liberty Cable, Inc. ("Bartholdi"), attached for filing are seven copies of the following "minimally redacted" documents related to the transaction between Bartholdi and Freedom New York, L.L.C. ("Freedom"): (i) the Asset Purchase Agreement; and (ii) Exhibit K to the Asset Purchase Agreement. Although these documents are already among the Commission's records, Bartholdi refiles these documents pursuant to a request from Joseph Weber, Esq., of the Wireless Telecommunications Bureau.

On May 20, 1996, Bartholdi submitted six documents under seal to Administrative Law Judge Richard L. Sippel, two of which are being refiled today. Judge Sippel ordered these two documents to be made publicly available on July 12, 1996. On July 19, 1996, Bartholdi requested that your office unseal these two documents and place them in the publicly-available record of the above-captioned proceeding. Copies of Bartholdi's May 20, 1996 and July 19, 1996 transmittal letters are attached.

Bartholdi refiles the two unsealed documents solely as a logistical matter. This refileing is not the result of any shortcoming on Bartholdi's part. It is Bartholdi's understanding that the

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Mr. William F. Caton  
November 25, 1996  
Page 2

two documents cannot be separated from the four other documents submitted on May 20, 1996.  
The documents refiled today are identical to the ones filed in May.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Vipul N. Nishawala', followed by a long horizontal line extending to the right.

Vipul N. Nishawala

Enclosures

cc: Hon. Judge Richard L. Sippel (with partial enclosures)  
Joseph Weber, Esq. (with partial enclosures)  
R. Bruce Beckner, Esq. (with partial enclosures)

# WILEY, REIN & FIELDING

1776 K STREET, N. W.  
WASHINGTON, D. C. 20006  
(202) 429-7000

May 20, 1996

WRITER'S DIRECT DIAL NUMBER

FACSIMILE  
(202) 429-7049

(202) 828-3155

The Honorable Richard L. Sippel  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Suite 220  
Washington, D.C. 20554

Re: In re Applications of Liberty Cable Co., Inc. (WT Docket No. 96-41)  
Bartholdi Cable Company, Inc.

Dear Administrative Law Judge Sippel:

On behalf of Bartholdi Cable Co., Inc., formerly known as Liberty Cable Co., Inc. ("Bartholdi"), attached, pursuant to the request of the Presiding Officer on May 17, 1996, are the following "minimally redacted" documents related to the transaction between Bartholdi and Freedom New York, L.L.C. ("Freedom"):

- (1) Asset Purchase Agreement;
- (2) a list of exhibits and schedules to the Asset Purchase Agreement;
- (3) exhibit K to the Asset Purchase Agreement;
- (4) Transmission Services Agreement;
- (5) a list of exhibits to the Transmission Services Agreement; and
- (6) Subcontractor Agreement.

As noted on the documents, the lists of exhibits and schedules to the Asset Purchase Agreement and to the Transmission Services Agreement were prepared for reference purposes only, and are not part of the agreements. In addition to the descriptions in the lists, the contents of the exhibits and schedules are referenced and described in the relevant agreements.

Bartholdi is providing the Bureau with copies of these documents -- as well as a set of non-redacted copies -- subject to the terms of a Protective Order between the parties that has yet to be finally negotiated and executed. Pursuant to the Presiding Officer's Order issued May 16,

1996, Bartholdi notes that the Bureau must "treat the documents as confidential until ordered otherwise." Order at 2 n.3.

Bartholdi also is providing Time Warner's outside counsel with copies of the redacted documents, subject to the terms of the "confidentiality guarantee" executed by R. Bruce Beckner on May 17, 1996. Bartholdi is willing to provide the documents to outside counsel for Cablevision upon receipt of a similarly satisfactory confidentiality guarantee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. Baker". The signature is fluid and cursive, with the first name "Michael" and last name "Baker" clearly distinguishable.

Michael K. Baker

Attachments

cc: Joseph Weber (w/attachments)  
R. Bruce Beckner (w/attachments)  
Chris Holt (w/o attachments)  
Jean Kiddoo (w/attachments)

HAND DELIVERY

DUPLICATE

WILEY, REIN & FIELDING

1776 K STREET, N. W.

WASHINGTON, D. C. 20006

(202) 429-7000

July 19, 1996

WRITER'S DIRECT DIAL NUMBER

FACSIMILE  
(202) 429-7049

(202) 828-3155

Mr. William B. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

JUL 19 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: In re Applications of Liberty Cable Co., Inc. (WT Docket No. 96-144)  
Bartholdi Cable Co., Inc.

Dear Mr. Caton:

Bartholdi Cable Co., Inc., formerly known as Liberty Cable Co., Inc. ("Bartholdi"), hereby requests, pursuant to the Order of Administrative Law Judge Richard L. Sippel issued July 12, 1996, that the Commission unseal and place in the publicly available record of the above-captioned proceeding the following agreements between Bartholdi and Freedom New York, L.L.C. ("Freedom") previously submitted to the Commission under seal: (1) Asset Purchase Agreement dated February 20, 1996; and (2) exhibit K to the Asset Purchase Agreement. It is noted that Freedom has agreed to the unsealing and placement in the public record of these documents.

This also will state for the record, as required by the same Order, that a Transmission Services Agreement dated February 20, 1996 between Bartholdi and Freedom has been on file since its execution at Bartholdi's offices and is available (with other station records) at 215 E. 95th Street, New York, NY 10128 for inspection by an authorized representative of the Commission, consistent with 47 C.F.R. § 94.109.

Respectfully submitted,



Michael K. Baker

cc:

Hon. Judge Richard L. Sippel  
Joseph Weber  
R. Bruce Beckner  
Chris Holt  
Jean Kiddoo

REDACTED COPY**Asset Purchase Agreement**

This Asset Purchase Agreement (this **Agreement**) is made and entered into this 20th day of February, 1996 (the **Effective Date**), by and between (i) Freedom New York, L.L.C., a Delaware limited liability company (**Buyer**) and (ii) Liberty Cable Company, Inc., a New York corporation, Liberty Cable Television, Inc., a Delaware corporation, Liberty Cable Newport, Inc., a New Jersey corporation, Birdsong Communications Inc., a Delaware corporation, Battery Place Cable Corp., a New York corporation and Liberty Interactive Video Enterprises, Inc., a Delaware corporation (collectively and individually, **Seller**).

**Recitals**

A. Seller owns and operates certain private cable systems in New York City, selected areas of New Jersey and Charlottesville, Virginia and provides subscription television services using microwave frequencies in the 18 Gigahertz (GHz) frequency band.

B. Seller desires to sell, and Buyer desires to purchase all of Seller's assets used and useful in the operation of the Business, except certain assets as expressly set forth herein, in accordance with the terms set forth in this Agreement.

**Agreements**

Now, therefore, in order to implement said sale and purchase, and in consideration of the mutual agreements herein, the parties agree as follows:

**Section 1. Definitions.**

1.1 **Defined Terms.** As used herein, the following terms shall have the following meanings:

***Accounts Receivable*** shall mean all accounts, accounts receivable, other receivables and rights to payment of every kind or nature whatsoever, contract rights, instruments, documents and notes, whether or not earned by performance.

***Acquisition Documents*** shall mean this Agreement, the Non-Competition Agreement, the RCN Non-Competition Agreement, the LIVE Agreement, the Transmission Services Agreement, the LIVE Registration Rights Agreement, the Buyer Registration Rights Agreement and any and all other instruments of assignment or assumption or other agreements, documents, certificates or instruments executed pursuant to or in connection with this Agreement or the transactions contemplated hereby.

***Affiliate*** when used with reference to a specified Person shall mean any Person that is a spouse, parent, grandparent, lineal descendant, sibling or other relative of such Person or any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person, provided that (a) neither Starrett Housing Corporation nor Emigrant Savings Bank shall be considered Affiliates of Seller, and (b) MFS Corporation shall not be considered an Affiliate of Buyer.

**Antitrust Claims** shall mean all obligations, liabilities and rights arising with respect to certain antitrust claims assertable by Seller with respect to matters arising prior to the date hereof, including the value of such claims at any date in the future.

**Asset Warranties** shall mean all manufacturer's, distributor's or Seller's warranties with respect to any of the Purchased Assets.

**Assumed Contracts** shall mean the equipment leases, real estate leases, conduit, riser, roof, basement or other space access agreements or licenses or easements, the Programming Agreements and other contracts described in Schedule 1.1(a) to this Agreement, together with (i) any additional contracts entered into by Seller between the date hereof and the Closing Date in accordance with this Agreement which Buyer expressly elects to assume and (ii) other agreements entered into in the ordinary course of Seller's business provided that the amounts payable pursuant to such agreements shall not exceed \$25,000 per year. Except as provided in Exhibit 1.1(a), Assumed Contracts shall not include building access agreements which do not satisfy the requirement for a building access agreement set forth in either clause (d) or (e) of the definition of Eligible Subscriber. Seller shall use its best efforts to minimize any early termination fees attributable to the NYNEX trunklines for the facilities in paragraph (e) of Exhibit 1.1(a)(e).

**Banking Day** shall mean, in respect of any city, any day on which commercial banks are open for business (including dealings in foreign exchanging foreign currency deposits) in that city.

**Building Access Agreement** shall mean a valid and binding agreement in the form attached as Exhibit A permitting Buyer to provide the services described in such agreement and meeting such additional criteria with respect to Eligible Subscribers as are set forth in the definition of "Eligible Subscriber".

**Bulk Building** shall mean any building with respect to which the Seller has entered into an access agreement with respect to a specified minimum number of subscribers.

**Business** shall mean the development, ownership and operation of certain private cable systems by Seller pursuant to which Seller provides subscription television services in the Service Area.

**Business Day** shall mean any day except a Saturday, Sunday or other day on which commercial banks are required or authorized to close in New York, New York.

**Buyer Registration Rights Agreement** shall mean that certain Registration Rights and Conversion Agreement in the form attached as Exhibit B to be entered into by RCN and the Seller effective as of the Closing Date.

**Buyer's Organizational Documents** shall mean the operating agreement and certificate of formation with respect to Buyer in the forms attached as Exhibit C.

**Closing** shall have the meaning set forth in Section 2.1(a).

**Closing Date** shall mean the date of the Closing.

**Communications Act** shall mean the Communications Act of 1934, codified at 47 U.S.C. § 151 et seq., as amended from time to time, and all rules and regulations promulgated thereunder.

**Comparison Subscribers** shall mean the total number of Eligible Subscribers existing as of the monthly date of determination immediately preceding the date for which such determination is being made.

**Construction Costs** shall mean the amount of any direct and indirect costs incurred by a Person with respect to providing cable television services to an Eligible Subscriber, which, with respect to costs incurred by or on behalf of Buyer after February 15, 1996, shall be calculated in the manner set forth on Exhibit D and, shall not exceed 115% of the amount determined for buildings of comparable size and technology in accordance with the methodology set forth on Exhibit D.

**Current Subscribers** shall mean the total number of Eligible Subscribers which satisfy all of the Payment Requirements existing as of the date on which such determination is being made.

**Customer** shall mean a Subscriber or any other Person who is an occupant of a building for which Seller has obtained a building access agreement to receive cable television services from Seller.

**DOITT** shall mean the New York City Department of Information, Technology and Telecommunications.

**Eligible Subscriber** shall mean a Customer in the Service Area generated by Seller or LIVE which meets all of the following criteria, any of which may be waived in the sole discretion of Buyer:

- (a) is a paying retail, installed bulk or uninstalled bulk Customer for basic cable television service, provided that the methodology used by Buyer to determine the actual number of Eligible Subscribers hereunder from time to time shall be consistent with the methodology used by Seller in calculating the number of Existing Subscribers of Seller as set forth on Schedule 1.1(b) to this Agreement;
- (b) either (i) is in a building that is identified on Exhibit E as a building that is passed by the Network, and Buyer shall have obtained all Valid Permits necessary to connect the building in which such Customer is located, or (ii) Buyer has obtained a valid license or authorization to provide cable television service to that Customer, either by valid



transfer of Seller's license or by valid licenses or authority obtained by Buyer directly from the FCC, if necessary;

- (c) Buyer determines that no other license, consent or approval (regulatory or otherwise) is required, and no legal impediment exists which must be resolved, to effectuate a transfer of such Customer to Buyer, or to commence providing cable television services to such Customer, as applicable, which has not been obtained or resolved;
- (d) except as otherwise provided in Exhibit M(1), with respect to any Seller Controlled Building, Seller or LIVE shall have provided to Buyer, at no cost to Buyer, (i) a valid written and legally assignable Building Access Agreement with respect to the building in which such Customer is located in a form attached as Exhibit A, and (ii) all applicable agreements necessary to permit Buyer to provide voice, data and video communications services to such Customer and all other occupants or tenants in the building in which such Customer is located for no cost, fee or commission, other than a fee equal to [REDACTED] of the revenue generated by voice communications services provided by Buyer, provided that if any such building is a RealCom Building, any fees payable hereunder by Buyer with respect to voice communications subscribers in such RealCom Building as of the date hereof shall be the excess of [REDACTED] of the revenue generated by voice communications services per month over [REDACTED] per subscriber per month;
- (e) except with respect to any building described on Exhibit M(1), with respect to any building which is not a Seller Controlled Building, (i) Seller shall have provided to Buyer at no cost to Buyer, a valid, written and legally assignable Building Access Agreement, (provided that the requirements set forth in this clause (i) shall not apply to (x) Customers in non-Seller Controlled Buildings in which Existing Subscribers are located provided a valid, written and legally assignable Building Access Agreement at no cost to Buyer is in effect or (y) up to [REDACTED] units in non-Seller Controlled Buildings set forth on Schedule 1.1(c) with respect to which Seller commenced negotiations prior to the Effective Date) and with respect to which a valid, written and legally assignable Building Access Agreement at no cost to Buyer is in effect, (ii) Seller or LIVE, as applicable, shall have obtained the right for Buyer to provide cable television services to such Customer and in the building in which such Customer is located at no cost to Buyer (except solely to the extent Buyer is then paying for such services in the ordinary course of its business with respect to the other buildings in the Service Area to which Buyer provides cable services), and (iii) Seller or LIVE, as applicable, shall have used (and shall continue thereafter to exercise) its commercially reasonable efforts to modify or obtain all applicable agreements necessary to permit Buyer to offer voice and data

communications services to such Customer and all other occupants or tenants in the building in which such Customer is located for a cost, fee or commission not to exceed the prevailing market rate for such services, subject to Buyer's approval; and

- (f) except for Existing Subscribers, such Customer is in a building containing at least [REDACTED] subscribers with respect to which the average Construction Costs are not more than [REDACTED] per subscriber.

provided that with respect to any subscriber in a building in which Buyer activates service after the Effective Date, such Subscriber shall be deemed to be covered by a valid, written and legally assignable building access agreement.

**Equipment** shall mean, other than the Transmission Equipment, all of Seller's right, title and interest in and to all property, plant and equipment used or necessary to deliver cable services to Customers including, without limitation, all off-air and satellite antenna and dishes, subscriber control hardware and software, electric devices, trunk and distribution cables, amplifiers, power supplies, conduit, ropes and pedestals, grounding and pole hardware, installed subscriber devices (including, without limitation, drop lines, converters, encoders, transformers behind television sets and fittings) up to and including the subscriber outlet: "head-end" (origination, transmission and distribution system); laser and/or infrared transmission and reception equipment; hardware; tools; inventory; spare parts; maps, as-built drawings and engineering data; vehicles; microwave equipment; powering and battery backup equipment; test equipment and all other tangible personal property and facilities owned and used or held for use in the Business.

\*

**Escrow Agent** shall mean Bank of New York.

**Escrow Agreement** shall mean that certain Escrow Agreement dated as of February 16, 1994 in the form attached as Exhibit F among Buyer, Seller and Escrow Agent.

**Excluded Assets** shall mean (a) the LIVE Assets, (b) the Antitrust Claims, (c) the Excluded Licenses, (d) the Transmission Equipment, (e) Seller's corporate seals, minute books, charter documents and corporate stock record books; (f) insurance claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Effective Date; (g) all cash, cash equivalents, certificates of deposit, treasury bills, and other marketable securities owned by Seller on hand or in the banks; (h) all pension, profit sharing or deferred (Section 401(k)) plans and trusts and any assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any; (i) all workers' compensation claims, obligations and refunds, whether arising before or after the Closing Date; (j) all claims in and to refunds for federal, state or local income taxes payable for periods prior to the Closing Date; and (k) all contracts that have terminated or have expired prior to the Closing in the ordinary course of business and as permitted under the terms hereof, and any contracts which do not constitute Assumed Contracts; provided that, contemporaneously with the transfer of any Excluded Assets to Buyer pursuant to this Agreement, such transferred

Excluded Licenses and Transmission Equipment shall constitute Purchased Assets, and not Excluded Assets, for purposes of this Agreement.

**Excluded Licenses** shall mean all FCC and other state or local licenses, translators, permits and other authorizations, temporary or otherwise, issued to Seller in connection with Seller's transmission of 18 GHz wireless cable services as set forth on Schedule 1.1(d), to the extent not transferred to Buyer in accordance with Section 2.1(e).

**Existing Subscribers** shall mean at least [REDACTED] "installed" and "uninstalled", "paying" Customers (not less than [REDACTED] of which are "installed") of Seller existing as of the Closing Date for which valid Building Access Agreements permitting the provision of cable services will be validly assigned to Buyer at the Closing, which Existing Subscribers are identified on Exhibit G to this Agreement.

**FAA** shall mean the Federal Aviation Administration.

**FCC** shall mean the Federal Communications Commission.

**Final Order** shall mean an order with respect to which no appeal, no petition for re-hearing, reconsideration, or stay, and no other administrative or judicial action contesting such consent or approval, is pending and as to which the time for filing any such appeal, petition or other action has expired or, if filed, has been denied, dismissed, or withdrawn and the time for instituting any further legal proceeding has expired.

**GAAP** shall mean generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

**Holdback** shall mean an amount equal to Fifteen Million Dollars (\$15,000,000) to be paid by Buyer to Seller, solely to the extent provided in Section 2.1(c).

**Holdback Note** shall mean the promissory note made by Buyer in favor of Seller in the original principal amount of \$15,000,000 evidencing Buyer's obligation to pay the Holdback, which promissory note shall be in the form attached as Exhibit H.

**Holdback Security Documents** shall mean the security agreements to be executed and delivered by Buyer in the form attached as Exhibit I.

**HSR Act** shall mean the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended from time to time.

**Independent Accountant** shall mean a "Big 6" Accounting Firm (or other firm mutually acceptable to Buyer and Seller) which accounting firm shall not have provided any

services to Buyer, Seller or any of their Affiliates for the five (5) years prior to the Closing Date.

**Initial Purchase Price** shall mean Twenty-Four Million Nine Hundred Thousand Dollars (\$24,900,000).

**Liberty Shareholders** shall mean, collectively, Howard P. Milstein, Edward L. Milstein and Philip L. Milstein.

**LIBOR** shall mean the rate, as of any date, for deposits in U.S. Dollars for a period of one month which appears on the Telerate Page 3750 as of 11:00 a.m., London Time, on the day that is two (2) London Banking Days preceding the applicable date. If such rate does not appear on the Telerate Page 3750, the LIBOR Rate for that applicable date will be determined as if the parties had specified "USD-LIBOR-Reference Banks" as the applicable LIBOR Rate. For purposes hereof, "USD-LIBOR-Reference Banks" shall mean that rate for a specified date determined on the basis of rates at which deposits in U.S. Dollars are offered by the Reference Banks (at approximately 11:00 a.m., London Time, on the day that is two (2) London Banking Days preceding the applicable date) to prime banks in the London interbank market for a period of one month commencing on the applicable date. Buyer will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If at least two (2) such quotations are provided, the rate for the applicable date will be the arithmetic mean of the quotations. If fewer than two (2) quotations are provided as requested, the rate for the applicable date will be the arithmetic mean of the rates quoted (at approximately 11:00 a.m., New York Time, on the applicable date) by four (4) major banks in New York City selected by Buyer for loans in U.S. Dollars to leading European banks for a period of one month commencing on the applicable date.

**Licenses** shall mean, other than the Excluded Licenses, all governmental licenses, permits, authorizations and rights, all rights in pending applications, and all additions thereto, including renewals and modifications and applications therefor, with respect to the Business, all of which Licenses are described in Schedule 1.1(d).

**Lien** shall mean, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance, conditional or installment sales agreement or other adverse claim or restriction of any kind in respect of such property or asset. For purposes of this Agreement, any restriction or limitation with respect to a security or other ownership interest (including any restriction on the right to vote, sell or otherwise dispose of such security or ownership interest) shall constitute a "Lien" thereon.

**LIVE** shall mean LVE, L.L.C., a Delaware limited liability company, which is formed or organized in accordance with the LIVE Organizational Documents.

**LIVE Agreement** shall mean that certain Marketing Services Agreement in the form attached as Exhibit J between Buyer and LIVE to be entered effective as of the Closing Date with respect to the performance of certain marketing and promotional services by LIVE for the benefit of Buyer.

**LIVE Assets** shall mean, collectively, those assets described on Schedule 1.1(e).

**LIVE Organizational Documents** shall mean the operating agreement and certificate of formation with respect to LIVE in the forms attached as Exhibit K.

**LIVE Registration Rights Agreement** shall mean that certain Registration Rights Agreement in the form attached as Exhibit L to be entered into by LIVE, RCN and the Liberty Shareholders effective as of the Closing Date.

**Material Adverse Change** shall mean any material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of Seller, taken as a whole.

**Material Adverse Effect** shall mean a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, properties or prospects of Seller, taken as a whole, (b) the rights and remedies of Buyer under this Agreement or any of the Acquisition Documents, or (c) the ability of Seller to perform its obligations under this Agreement or any of the other Acquisition Documents.

**Net Eligible Subscribers** shall mean, as of the date for which such determination is being made, the amount by which (a) the total number of Current Subscribers exceeds (b) the total number of Comparison Subscribers.

**Network** shall mean that certain wire-based cable television network used or available to Buyer, as such network is expanded from time to time.

**Non-Competition Agreement** shall mean that certain Non-Competition Agreement dated the date hereof among Buyer and certain affiliates of Seller in the form attached as Exhibit M.

**Non-Competition Payment** shall mean an amount equal to [REDACTED] Dollars [REDACTED] to be paid to certain covenantors in accordance with the Non-Competition Agreement.

**NYSCCT** shall mean the New York State Commission on Cable Television, or its successor, the Public Service Commission.

**Payment Requirements** shall mean, as of the date of determination, that (a) with respect to Eligible Subscribers in Bulk Buildings, the account of such Bulk Building is not more than 60 days past due, and (b) with respect to all other Eligible Subscribers:

- (i) on the last day of the calendar month preceding the date of determination, the account of such Eligible Subscriber is not more than 60 days past due;

- (ii) such Eligible Subscriber has not given notice of its intent to discontinue service;
- (iii) payment of the bills, or any portion thereof, for cable services rendered to such Eligible Subscriber has not been waived or forgiven during the prior 2 calendar months before the date of determination, other than in the ordinary course of business; and
- (iv) such Eligible Subscriber has not been induced to become connected to services by any means which differ from the normal marketing practices of Seller as in effect immediately prior to the date of this Agreement (provided that the past marketing practices used by Seller prior to the date of this Agreement in connection with the Windsor and Normandie Court buildings, pursuant to which Seller provided cable services free of charge or at discounted rates, shall not constitute normal marketing practices of Seller other than for such buildings, and LIVE represents that such past marketing practices have been discontinued).

**Person** shall mean an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or agency or instrumentality thereof.

**Purchased Assets** means, excluding the Excluded Assets, all assets and rights of every kind and nature, real, personal and mixed, tangible and intangible, owned by Seller or in which Seller has an interest (as lessee, licensee or otherwise), including all assets and rights acquired by Seller in connection with the Business between the Effective Date and the Closing Date, and which are used or usable in connection with the operation of the Business, including, without limitation:

- (a) all Existing Subscribers;
- (b) all Tangible Assets and, to the extent assignable without consent,  
all Asset Warranties;
- (c) the Licenses;
- (d) the Assumed Contracts;
- (e) Accounts Receivable (reduced, but not below zero, by associated  
accounts payable);
- (f) all goodwill, know-how, slogans, jingles, the name "Liberty" and  
all derivatives thereof in connection with the communications business (other than the name  
"LIVE", provided Seller may not use the name "Liberty" in connection with the name

"LIVE") and all trademarks, trade names, service marks, logos, copyrights, customer lists and other intangible assets used or usable with respect thereto; and

(g) three (3) parking spaces, roof rights and head-end room in Normandie Court at no cost to Buyer, and other space (up to an additional twelve parking spaces and space for customer service and operations) in Normandie Court in accordance with the terms of that certain lease agreement attached as Exhibit N; and

(h) all files, books and records including, without limitations, computer programs, tapes and electronic data processing software, accounting journals and ledgers, copies of FCC filings and other documents relating to any of the assets described in clauses (a) through (g) above.

**RCN** shall mean RCN Corporation, a Delaware corporation.

**RCN Non-Competition Agreement** shall mean that certain RCN Non-Competition Agreement to be entered into between the Buyer and RCN on the Effective Date.

**RealCom Buildings** shall mean the buildings identified on Schedule 1.1(f).

**Reference Banks** shall mean, for purposes hereof, four (4) major banks in the London interbank market.

**Seller Controlled Buildings** shall mean those buildings owned or controlled by the Liberty Shareholders, or their respective Affiliates, directly or indirectly, as set forth on Schedule 1.1(g), as such schedule is supplemented from time to time.

**Service Area** shall mean (a) Manhattan, Bronx, Brooklyn, Queens and Staten Island, in the city of New York, (b) The Charlottesville Inn and (c) the cities and towns in New Jersey in which Seller currently conducts its business as identified more specifically on Schedule 1.1(h) provided that to the extent that Buyer has not obtained a valid and binding Building Access Agreement with respect to any building in Cliffside Park, Fort Lee, Guttenberg, Union City or West, N.Y. on or before the six-month anniversary of the Closing Date, such city or town shall not be deemed to be part of the Service Area unless Buyer and Seller agree otherwise.

**System Instruments** has the meaning ascribed in Section 3.19.

**Systems** shall mean the community antenna and cable television systems that is the subject of the transaction contemplated by this Agreement, which includes any facility owned, operated, used or usable, in whole or in part, by Seller that, in whole or in part, receives, directly or indirectly, over or off-the-air or by wire, signals transmitting (visual and/or sound) programs broadcast or originated by others or originated internally, without change or with amplification or other modifications, and distributes the same by means of electrical impulse or fiber optics, including for purposes hereof, the Transmission Equipment and the Excluded Licenses.

***Tangible Assets*** shall mean the Equipment (other than the Transmission Equipment) and all other tangible assets used or otherwise necessary to conduct the Business, including those certain assets identified on Schedule 1.1(i) to the Agreement, together with any additional assets relating to the Business acquired by Seller between the date hereof and the Closing Date.

***Transmission Equipment*** shall mean all transmission and reception equipment described on Schedule 1.1(j) relating to the provision of either 18 GHz microwave or infrared wireless cable services for each building in which Existing Subscribers are located, from the input of the transmitter to the output of the receiver, to the extent not transferred to Buyer pursuant to Section 2.1(d).

***Transmission Services Agreement*** shall mean that certain Transmission Services Agreement in substantially the form attached as Exhibit O between Seller and Buyer pursuant to which Buyer shall retain Seller to provide 18 GHz wireless cable transmission services to Buyer.

***Valid Permits*** shall mean permits, including, without limitation, building permits, construction permits, and other permits and licenses, entitling Buyer, or its representatives or agents, to commence immediately such construction activities as may be necessary to connect applicable Eligible Subscribers.

**1.2 Other Definitional Provisions.** For purposes of this Agreement and the other Acquisition Documents, the following additional rules of construction shall apply:

- (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter;
- (b) the term "including" shall not be limiting or exclusive, unless specifically indicated to the contrary; and
- (c) all references to "Sections" or "subsections" in an Acquisition Document shall be to Sections or subsections of such Acquisition Document, unless otherwise specifically provided.

## **Section 2. Purchase and Sale of Purchased Assets.**

### **2.1 Sale of Purchased Assets.**

(a) ***Initial Acquisition*** – At Closing, Seller shall sell and Buyer shall acquire all Purchased Assets (including all Existing Subscribers) in consideration of the payment by Buyer to Seller of the Initial Purchase Price, the Non-Competition Payment to the Covenantors (as defined in the Non-Competition Agreement), the 19.9% Membership Interest (as defined in the Amended and Restated Operating Agreement of Freedom New York,



L.L.C.) in the Buyer and the execution and delivery by Buyer to Seller of the Holdback Note (the "Aggregate Purchase Price"). The closing of the initial acquisition of Purchased Assets is referred to as the "Closing".

(i) At the Closing, Seller shall transfer to Buyer all Purchased Assets.

(ii) The acquired Existing Subscribers and Purchased Assets shall be transferred free and clear of Liens (other than leases entered into solely in the ordinary course of Seller's business to the extent set forth in Schedule 1.1(a)), and Buyer shall not assume any other liabilities or obligations of Seller in connection with any such Eligible Subscribers or Purchased Assets.

(b) *Escrow.* On or before the Effective Date, Buyer shall deliver into escrow (i) an amount equal to [REDACTED], which represents the sum of the Initial Purchase Price and the Non-Competition Payment, (ii) an amount equal to [REDACTED] (representing Seller's Construction Costs from [REDACTED] through [REDACTED] and the amounts payable pursuant to Section 2.2(d)(i)(e)) which amounts shall be held by Escrow Agent in accordance with the terms and provisions of the Escrow Agreement and (iii) the Acquisition Documents. At Closing, Escrow Agent shall release the Initial Purchase Price and Construction Costs to Seller, the Non-Competition Payment to the Covenantors (as defined in the Non-Competition Agreement) and the Acquisition Documents to the applicable parties thereto. In the event that the conditions to Closing set forth in Section 7 have not been satisfied by 180 days after the Effective Date (subject to the provisions of Section 7.3), Buyer may, by written notice to Seller and Escrow Agent, request that the Escrow Agent return all amounts held in escrow to Buyer, whereupon Escrow Agent shall immediately deliver to Buyer all amounts then held in escrow and all Acquisition Documents shall be returned to the parties delivering same. Any and all interest or other income earned on the amounts held in escrow shall be solely for the benefit of and shall be paid to Seller if Closing occurs and to Buyer if Closing does not occur.

(c) *Release of \$15,000,000 Holdback.* Buyer shall pay to Seller the Holdback, solely to the extent provided below:

(i) From and after the Closing, Buyer shall pay to Seller [REDACTED] for each Net Eligible Subscriber delivered by Seller (or LIVE, as applicable) to Buyer in excess of [REDACTED] Net Eligible Subscribers, up to \$15,000,000 in the aggregate, less any portion of the Holdback previously paid to Seller hereunder. Buyer shall pay such amounts within five Business Days after Seller delivers [REDACTED] Net Eligible Subscribers, provided that Buyer shall not be required to pay such amounts more frequently than monthly.

(ii) Buyer shall deduct from the amount of any Holdback otherwise payable under Section 2.1(c)(i), for each Net Eligible Subscriber for which Seller was not providing cable television services on the Closing Date, the amount of any Construction Costs incurred by Buyer with respect to providing cable television services to such Eligible Subscriber.

(d) *Seller's Construction Costs and Operating Losses and Profits.*

(i) Seller's Construction Costs incurred from and after [REDACTED] through [REDACTED] with respect to Existing Subscribers in excess of [REDACTED] "installed" shall be deemed to be [REDACTED] which amount shall be released by the Escrow Agent to Seller on the Closing Date pursuant to Section 2.1(b). Buyer shall have thirty days from and after the Effective Date to audit Seller's Construction Costs with respect to such period. If within such thirty-day period Buyer provides Seller written notice to the effect that the actual amount of such Construction Costs was less than [REDACTED], Seller shall promptly pay the difference to Buyer by check.

(ii) On the Closing Date, Buyer shall reimburse Seller for Seller's Construction Costs incurred by Seller between [REDACTED] and the Closing Date with respect to Existing Subscribers in excess of [REDACTED] "installed" by Seller prior to the Closing, whether or not such installation is complete as of the Closing Date, provided that Seller must notify Buyer of all construction activity and obtain the prior written consent of Buyer with respect to such construction to the extent that Construction Costs with respect to any single building or purchase order exceed \$5,000.

(iii) Seller shall cooperate with Buyer in good faith in order to provide for an orderly transition of construction services.

(iv) At Closing, Buyer shall reimburse Seller for any operating losses (to be calculated and determined solely in the manner set forth on Schedule 2.1(d)) incurred by Seller between the Effective Date and the Closing Date, in an amount not to exceed the lesser of (i) [REDACTED] per month or (ii) [REDACTED] in the aggregate. If there shall be any operating profits, (calculated in the manner set forth on Schedule 2.1(d)) incurred by Seller between the Effective Date and the Closing Date, such operating profits shall be paid to Buyer at Closing.

(e) *Transmission Equipment.* As additional consideration for the payments and other obligations of Buyer hereunder, Seller shall transfer to Buyer, at no additional cost, the Transmission Equipment, or portions thereof, on a building by building basis, upon the date that either (i) the Excluded Licenses with respect to the applicable building are transferred to Buyer, or Buyer otherwise obtains all applicable permits, licenses, authorizations and approvals required to operate the Transmission Equipment or to provide cable television services to Buyer's customers with respect to the applicable building, (ii) Buyer notifies Seller that Buyer does not require transmission services with respect to the applicable building, or (iii) Buyer otherwise requests Seller to transfer such Transmission Equipment. Transfers contemplated by this Section 2.1(e) shall be made in the same manner as provided in Section 2.2 of this Agreement with respect to transfers of Tangible Assets at Closing.

(f) *Performance of Post-Closing Obligations.* Upon Closing, Buyer shall assume Seller's obligations to be performed after 12:01 A.M. on the day following the Closing Date (but not obligations to have been performed by Seller at or prior to such time)

under, and as set forth in, the Assumed Contracts acquired and assumed by Buyer on the Closing Date to the extent that such obligations arise out of the operation of the Business by Buyer on or after the Closing Date.

(g) *No Assumption of Liability.* Except as expressly set forth in Sections 2.1(a) and (f), Buyer shall not assume or be deemed to have assumed under this Agreement, the Acquisition Documents or otherwise by reason of the transactions contemplated by this Agreement or the Acquisition Documents, any liabilities, obligations or commitments of Seller of any nature whatsoever, absolute or contingent, known or unknown, and the execution, delivery and performance of this Agreement and the Acquisition Documents shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement. Without limiting the generality of the foregoing, Buyer shall not assume nor be liable for any liability or obligation of Seller arising out of any collective bargaining agreement, insurance (except to the extent of any premiums or payments associated with either (i) insurance retained by Buyer after the Closing Date or (ii) in connection with the termination of any insurance each of which shall be pro-rated as of the Closing Date) pension, retirement, deferred compensation, incentive bonus or profit sharing, employee benefit plan or trust or other employee benefit or obligation, or any litigation, proceeding or claim by any person or entity relating to the Business or the operation thereof, or otherwise, whether or not such litigation, proceeding, claim, liability or obligation is pending, threatened or asserted before, on or after the Closing Date.

(h) *Employee Obligations.* All employees and consultants of Seller shall be terminated by Seller prior to Closing and Seller shall be solely responsible for any and all costs, expenses, liabilities or obligations arising out of any such termination, including but not limited to accrued compensation, vacation and leave. Seller agrees to provide any and all notifications required by law in connection with the termination of such employees and consultants, including notifications required under the WARN Act. Buyer may, in its sole discretion, elect to hire any or all of such former employees of Seller commencing on or after the Closing.

(i) *Allocation of Aggregate Purchase Price.* For all United States tax purposes, the Buyer and the Seller agree to report the transactions contemplated in this Agreement as (i) a contribution of the Purchased Assets set forth in Schedule 2.1(x) hereto by the Buyer to the Seller in exchange for the 19.9% Membership Interest described in Section 2.1(a) above (the "Contributed Assets") and (ii) a taxable sale of the Purchased Assets set forth in Schedule 2.1(y) hereto by the Seller to the Buyer in exchange for the Initial Purchase Price, the Non-Competition Payment, the Holdback Note and the amount of any liabilities of the Buyer that are expressly assumed by the Seller pursuant to Section 2.1(g) of this Agreement (the "Sale Assets"). The Buyer and the Seller agree that the fair market value of the Contributed Assets and the Sale Assets at the time of such contribution or sale, as the case may be, shall be the agreed fair market value that is set forth on such Schedules hereto with respect to such assets. In addition, the Buyer and the Seller shall allocate the Initial Purchase Price, the Non-Competition Payment, the Holdback Note and the amount of any assumed liabilities (if any) among the Sale Assets as of the Closing Date on Internal Revenue Service ("IRS") Form, 8594 in accordance with section 1060 of the Internal Revenue Code of

1986, as amended and the treasury regulations promulgated thereunder. The Buyer and the Seller shall timely file with the appropriate tax or other governmental authorities copies of the IRS Form 8594 described above and shall utilize the allocation set forth therein in the preparation of all tax returns and forms (including attachments thereto). Neither the Buyer nor the Seller shall agree to any adjustment of the allocations set forth in this Section 2.1(i) without the prior written approval of the other party, which approval shall not be unreasonably withheld.

## **2.2 Closing, Pro Ration, Adjustments, Documentation**

(a) **Pro Rations.** Seller shall be responsible for all expenses arising out of contracts, agreements and commitments included in the Purchased Assets transferred at Closing (other than the Assumed Contracts, payment of which shall be prorated pursuant to Section 2.2(b) hereof) for all periods prior to the Closing Date. Subject to the Transmission Services Agreement, Buyer shall not be responsible for any amounts associated with the Excluded Assets. All prorations shall, to the extent feasible, be determined and paid on the Closing Date with a final settlement and payment thereof to be made within ninety (90) days after the Closing Date. If any dispute arises under this Agreement regarding amounts determined in accordance with this Section, it shall be referred to an Independent Accountant. The determination made by the Independent Accountant shall be conclusive and binding on each party and the fees of the Independent Accountant shall be divided equally between Buyer and Seller.

(b) **Adjustments to Purchase Price.** The following items of income, cost and expense relating to the Purchased Assets shall be prorated between Seller and Buyer as of the Closing Date (or such other date or dates as the parties may hereafter agree upon in a separate writing) or paid by Seller to Buyer, in the manner set forth below:

(i) All real and personal properties taxes and assessments with respect to the Purchased Assets shall be prorated to the Closing Date;

(ii) Deposits by customers (x) for converters, encoders, decoders, lockbox devices and other equipment and (y) for cable television service and related sales as of the Closing Date shall be either deducted from Seller's proceeds at Closing or transferred by Seller to Buyer at Closing; and

(iii) All revenue and expense items (with the exception of capital expenditures, which expenditures shall be the sole responsibility of Seller) will be prorated as of the Closing Date. During the 30-day period following Closing, Buyer and Seller will conduct a true-up as to revenues and all other expenses relative to the Business. Upon completion of the true-up by Buyer and Seller, (x) if such true-up indicates that Buyer owes any additional amount to Seller, Buyer shall pay to Seller such amount within thirty (30) days following the date on which such amount is finally determined, or (y) if such true-up indicates that Seller owes any additional amount to Buyer, Seller shall pay to Buyer such amount within thirty (30) days following the date on which such amount is finally determined and, if not so paid within such thirty (30) day period, Buyer may offset such obligations of

Seller against the next installment(s) of the Holdback to be made by Buyer to Seller under Section 2.1(c) to the extent of amounts owed by Seller under this Section 2.2(b)(iii). If any dispute arises under this Agreement regarding the amounts determined in accordance with this Section, it shall be referred to an Independent Accountant. The determination made by the Independent Accountant shall be conclusive and binding on each party and the fees of the Independent Accountant shall be divided equally between Buyer and Seller.

(c) **Seller's Closing Deliveries.** On the Effective Date

(i) Seller shall deliver to the Escrow Agent, the following:

(a) a warranty bill of sale with respect to all Tangible Assets included within the Purchased Assets transferred at Closing;

(b) appropriate warranty instruments of assignment with respect to the Existing Subscribers and other Purchased Assets transferred at such Closing duly and validly executed by Seller;

(c) Building Access Agreements for each of the Seller Controlled Buildings, each building access agreement with respect to each non-Seller Controlled Buildings and a valid assignment;

(d) each of the Acquisition Documents, duly and validly executed by Seller;

(e) the Buyer Organizational Documents and the LIVE Organizational Documents;

(f) all other documents required to be delivered by or on behalf of Seller pursuant to this Agreement or the other Acquisition Documents; and

(g) a certificate of Seller executed by the President of Seller certifying that all conditions to Buyer's obligation to close have been satisfied.

(ii) All corporate and other proceedings of Seller in connection with the transactions contemplated by this Agreement and the other Acquisition Documents, and all documents and instruments incident to such corporate proceedings, shall be satisfactory in substance and form to Buyer and its counsel, and Buyer and its counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested, and Seller shall have provided to Buyer appropriate authorizing resolutions, good standing certificates, certified articles of incorporation and bylaws for Seller, in each case reasonably satisfactory to Buyer and its counsel;

(iii) Seller and its Affiliates shall have changed each of their corporate names legally and of record (and shall have properly notified all applicable governmental entities, including the FCC, of such change) such that the name "Liberty" is not used in any way by Seller or any of its Affiliates at or after Closing in connection with the communications business; and

(iv) At Closing, Escrow Agent shall deliver each of the documents described in the Section 2.2(c) to Buyer, provided that if the Closing does not occur hereunder, Escrow Agent shall return such documents to Seller.

(d) **Buyer's Closing Deliveries.** On the Effective Date, (i) Buyer shall deliver to Escrow Agent, as applicable, the following:

- (a) the Initial Purchase Price in immediately available federal funds;
  - (b) the Holdback Note and the Holdback Security Documents; and
  - (c) the Non-Competition Payment;
  - (d) Seller's Construction Costs and operating losses, if any, payable by Buyer pursuant to Section 2.1(d), determined in accordance with Section 2.1(d);
  - (e) the prepaid Per Subscriber Fees of [REDACTED] pursuant to Section 3(a) of the LIVE Agreement, and the initial annual payment of [REDACTED] pursuant to Section 3(c) of the LIVE Agreement;
  - (f) each of the Acquisition Documents to which Buyer is a party, duly and validly executed by Buyer; and
  - (g) a certificate of Buyer executed by the President of Buyer certifying that all conditions to Seller's obligation to close have been satisfied.
- (ii) all corporate and other proceedings of Buyer in connection with the transactions contemplated by this Agreement and the other Acquisition Documents, and all documents and instruments incident to such corporate proceedings, shall be satisfactory in substance and form to Seller and its counsel, and Seller and its counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

**2.3 Time and Place of Closings; Termination of Agreement.** Closing of the transactions contemplated by this Agreement (the **Closing**) shall be held at such place as Buyer and Seller may agree. The Closing shall occur upon the satisfaction (or waiver) of all of the conditions precedent set forth in Section 7 or such other time or date as the parties may agree upon in writing.

**2.4 Investigations Pending Closing.** Prior to Closing, Buyer and its representatives and advisors may make such investigation of the Existing Subscribers and Purchased Assets, including, but not limited to, Seller's financial records relating thereto, as it deems necessary or advisable. Buyer and its agents, consultants, advisors and representatives shall have, upon reasonable notice given after the date hereof, reasonable access during normal business hours to the Purchased Assets, and Seller agrees to furnish to Buyer, its agents, consultants, advisors and representatives such financial and operating data and other information with respect to the Purchased Assets as Buyer shall, from time to time, reasonably request.

### **Section 3. Representations and Warranties of Seller.**

In order to induce Buyer to enter into this Agreement, Seller hereby represents and warrants to Buyer that the following statements are true, correct and complete on the Effective Date. The representations and warranties of Seller set forth in this Agreement and in the other Acquisition Documents are continuing in nature and Seller shall promptly inform Buyer of any matter which would cause any such representations or warranties to be untrue, incorrect or incomplete.

**3.1 Incorporation.** Each Seller is a duly organized and validly existing corporation in good standing under the laws of the state of its incorporation. Each Seller has full corporate power and authority to carry on its business and operations as presently conducted and is duly qualified to do business in each jurisdiction in which it is either doing business or in which the failure to qualify would have a Material Adverse Effect on Seller. Seller does not directly or indirectly own or otherwise control any capital stock of, or have any ownership interest in, any corporation, partnership or other entity. Attached hereto as Schedule 3.1 is a complete and correct copy of the certificate of incorporation and bylaws (together with all amendments thereto and restatements thereof) of each Seller.

### **3.2 Corporate and Governmental Authorizations.**

(a) Seller has full corporate power and authority to execute and deliver this Agreement and the other Acquisition Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement and the other Acquisition Documents to which Seller is a party have been duly authorized by all requisite corporate action of Seller.

(b) No consent or authorization of, or filing with, any Person is required on the part of Seller in connection with Seller's execution, delivery or performance of this Agreement and the other Acquisition Documents to which it is a party.

**3.3 Binding Effect.** This Agreement and the other Acquisition Documents to which Seller is a party have been duly and validly authorized, executed and delivered by Seller. This Agreement and the other Acquisition Documents executed and delivered by Seller constitute or, when executed by Seller, will constitute, the legal, valid and binding

obligation of Seller enforceable against Seller in accordance with their respective terms, subject to bankruptcy, insolvency, and similar laws of general application affecting creditors' rights and remedies.

**3.4 No Conflict** Neither the execution and delivery by Seller of this Agreement and the Acquisition Documents nor the consummation of the transactions contemplated by this Agreement and the Acquisition Documents: (a) violates any applicable law, regulation, order, judgment, injunction, decree, rule or ruling of any governmental authority, (b) violates any provision of the certificates of incorporation or bylaws of Seller, (c) results, in any material respect, in any breach of, or constitute (with due notice or lapse of time or both) a default under any agreement, instrument, license or permit to which Seller is a party or by which or to which Seller or any of its assets are subject or bound, (d) results in the creation or imposition of any Lien on any of the Purchased Assets or the Excluded Assets, or (e) requires the consent of any Person.

**3.5 Title to Properties; Liens; Condition of Properties**

(a) Seller has good and valid title to the Purchased Assets, free and clear of Liens, and Seller is the sole and exclusive owner of all right, title and interest in and to all Purchased Assets. All Tangible Assets are in good working order and repair and comply in all material respects with applicable rules, regulations and standards regarding their intended use. Seller holds, owns and operates the Business, the Purchased Assets and the Excluded Assets directly, and not through any subsidiary, joint venture or other entity, organization or enterprise, however organized or however denominated or evidenced.

(b) Schedule 3.5(b) lists all Excluded Assets used or otherwise necessary to conduct the Business. Seller has good and valid title to the Excluded Assets, free and clear of Liens. The Transmission Equipment is in good working order and repair and complies in all material respects with applicable rules, regulations and standards regarding their intended use. Seller is the sole and exclusive owner of all right, title and interest in and to all Transmission Equipment and the Excluded Licenses.

(c) All leases of personal property to which Seller is a party are valid, binding and enforceable in accordance with their terms, and neither Seller nor, to Seller's knowledge, any other party thereto is in default thereunder.

(d) Except as set forth in Schedule 3.5(d), all Purchased Assets and Excluded Assets comply with all applicable ordinances and regulations and building, zoning and other laws, and meet the requirements, standards, rules and regulations of the FCC (including all FCC licenses), the FAA and of all other applicable federal, state and local governmental authorities.

(e) Except as set forth on Schedule 3.5(e) Seller does not own or have any interest in any real property in connection with the Business, including leasehold interests and easements, and rights in and agreements with respect to real property.



(f) Seller has not received any notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation, building code or other law, order, regulation or requirement relating to or affecting any Purchased Asset or Excluded Asset or improvements thereon, or of the need for any material repair, remedy, construction, alteration or installation with respect to such Purchased Assets or Excluded Assets or improvements thereon, or any change in the means or methods of conducting operations thereon.

**3.6 Physical Plant.** Except as set forth on Schedule 3.6, the plant, structures and equipment constructed by Seller are structurally sound with no material defects, in good operating condition and repair and are adequate for the uses to which they are being put. None of such plant, structures or equipment are in need of maintenance or repairs except for ordinary, routine maintenance and repairs which are not material in nature or cost.

**3.7 Americans With Disabilities Act.** Seller is in full compliance with the Americans With Disabilities Act's mandates and obligations, including but not limited to, those regarding telecommunications providers, facilities accessibility and employment practices and Seller has not received notice that it has failed to comply in any respect with the Americans with Disabilities Act.

**3.8 Financial Condition of Seller.**

(a) Seller has heretofore delivered to Buyer true, complete and correct copies of the financial statements described on Schedule 3.8(a) (the **Financial Statements**). Seller represents and warrants that the Financial Statements (i) have been prepared in accordance with GAAP consistently applied; (ii) are complete, correct and in accordance with the books and records of the Business; (iii) show all expenses attributable to the Business; (iv) fairly present the financial position and results of operations of Seller with respect to the Business, as at and for the periods indicated; and (v) fairly allocate income and expenses among the Business and any other properties operated by Seller or an Affiliate of Seller. The financial information delivered pursuant to this Section is complete and accurate and does not omit or fail to contain any information necessary to make such financial information not materially misleading. Seller has no material liabilities or obligations, whether accrued, absolute, contingent or otherwise, and whether due or to become due, and Seller does not know of any basis for any claim against Seller for any such material liabilities or obligations, except to the extent set forth in the Financial Statements and the notes thereto, none of which individually or in the aggregate have or will have a Material Adverse Effect.

(b) Except to the extent provided in the most recent Financial Statement, there are no material liabilities or obligations of Seller or otherwise relating to the Business. Since January 31, 1996, there has been no change in the financial condition of Seller or results of operations of the Business, or either of them, nor has any other event or condition occurred which has had or could reasonably be expected to have a Material Adverse Effect.

(c) All federal, state, county and local tax returns, reports and declarations of estimated tax or estimated tax deposit forms required to be filed by Seller have been duly